

FAO No. 5179 of 2016 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No. 5179 of 2016 (O&M)

Date of Decision: December 11, 2019

Rohit @ Javed

..... Appellants(s)

Versus

Tarwinder @ Happy and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Deepak Sharma, Advocate
for the appellant.

None for respondents no.1 & 2, despite service.

Mr. Suvir Dewan, Advocate
for respondent no.3.

LISA GILL, J.

This appeal has been filed by the appellant-claimant seeking enhancement of the compensation awarded to him vide award dated 12.04.2016, passed by learned Motor Accident Claims Tribunal, Ambala (hereinafter referred to as 'the Tribunal') on account of injuries suffered by him in the motor vehicle accident, which took place on 18.07.2014.

Brief facts necessary for adjudication of the case are that a claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed by the claimant-appellant seeking compensation on account of the injuries suffered by him in the motor vehicle accident, which took place on 18.07.2014, due to the rash and negligent driving of the offending vehicle

bearing registration No. HR-01-AB-8557, by its driver Tarwinder @ Happy-respondent no.1, which led to the amputation of the right leg of the claimant.

Learned Tribunal on considering the evidence on record concluded that the appellant sustained injuries leading to amputation of his right leg in the said motor vehicle accident, caused due to the rash and negligent driving of the offending vehicle, by its driver, respondent no.1 – Tarwinder @ Happy. Learned Tribunal awarded compensation of Rs.8,68,667/- to the claimant, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	For 60% permanent disability	1,20,000/-
2.	For pain and sufferings	40,000/-
3.	For diet and nutrition, attendant charges, transportation etc.	30,000/-
4.	For medical bills	4,500/-
5.	For future prospects including getting treatment and artificial limb implanted	1,50,000/-
	Total	3,44,500/-

Aggrieved from the quantum of the compensation, present appeal has been filed.

Learned counsel for the appellant vehemently argues that the appellant-claimant, who is 13 years old, suffered amputation of his right leg below the knee and suffered permanent physical disability of 60%. Therefore, his functional disability is not less than 80%. Learned Tribunal, it is submitted, has not awarded appropriate compensation towards loss of future earnings. Meagre compensation, it is submitted, has been awarded under the other heads. It is, thus, prayed that the compensation be enhanced.

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Per contra, learned counsel for the insurance company while refuting the arguments raised by learned counsel for the appellant submits that just and reasonable compensation has been awarded by the learned Tribunal, which calls for no further enhancement. Dismissal of this appeal is prayed for.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is a matter of record that the motor vehicle accident took place on 18.07.2014. Initially the claimant was taken to Civil Hospital, Ambala City from where he was referred to PGI, Chandigarh, where he remained admitted from 18.07.2014 to 23.07.2014 and ultimately right leg below the knee of the injured was amputated. However, except the oral evidence, there is no medical evidence or disability certificate to show that the claimant suffered permanent disability to the extent of 60%. Therefore, functional disability of the appellant is assessed as 50% instead of 60%.

Keeping in view the facts and circumstances of the case, it is considered just and expedient to assess income of the appellant to be Rs.10,000/- per month.

Loss of income is to be worked out in terms of the guidelines of the judgment of Hon'ble Supreme Court in Sayed Sadiq etc. Vs. Divisional Manager, United India Insurance Company, 2014(1) RCR (Civil) 765. Functional disability suffered by the appellant is 60% in this case. Therefore, loss of income is assessed as Rs.8,000/- per month (80% of Rs.10,000/-).

It is a matter of record that the appellant was 30 years old at the time of accident. Therefore, 40% increment on account of future prospects is afforded, taking the amount to $[(8,000 + 3,200 (8,000 \times 40\%))] =$ Rs.11,200/- per month i.e. Rs.1,34,400/- per annum. Multiplier of 17 is to be applied. Loss of future earnings is, thus, assessed as Rs.22,84,800/- $[1,34,400 \times 17]$.

As the loss of earnings have been awarded, the amount of Rs.60,000/- on account of permanent disability is not afforded. The appellant is, however, entitled to a sum of Rs.1,00,000/- each on account of pain and sufferings (instead of Rs.30,000/-) and loss of amenities. Appellant is further entitled to Rs.15,000/- each for special diet, attendant charges and transportation. The amount awarded by the learned Tribunal on account of medical treatment i.e. Rs.7,48,667/- is maintained.

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Appellant-claimant is, thus, entitled to compensation which is re-worked as under:-

Sr. No.	Heads	Calculations
1.	Medical treatment	7,48,667/-
2.	Loss of future earnings on account of permanent disability	22,84,800/-
3.	Pain and suffering	1,00,000/-
4.	Loss of amenities	1,00,000/-
5.	Special diet	15,000/-
6.	Transportation	15,000/-
7.	Attendant charges	15,000/-
	Total	32,78,467/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimant shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

Appeal is accordingly disposed of.

December 11, 2019.
Sunil

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No